

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 2 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAGJI ANANDJI

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner
MS HB PUNANI, APP for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/02/2000

ORAL JUDGEMENT

#. Rule. Ms.H.B.Punani has already put appearance for the respondents, office needs not to issue notice of the rule.

#. Heard the learned counsel for the respondent and perused the Special Criminal Application.

#. The petitioner aged 70 years - convict of the offence under section 302 of the IPC at Sabarmati Central Prison, Ahmedabad challenges the order of the Superintendent, Ahmedabad Central Prison dated 20.12.1999 under which for late surrendering by 14 days, he was punished.

#. Facts are that, on 21.11.1998 parole leave was granted to the petitioner and he has to surrender after 20 days. His parole leave was extended for 10 days by the competent authority under the order dated 10.12.1998 and he has to surrender on 22.12.1998, but he surrendered on 5.1.1999, that is, late by 14 days. He was punished by penalty of forfeiture of furlough leave and cash deposite. That order has been challenged.

#. Learned counsel for the respondents submits that, against that order the appeal lies to the Inspector General of Prison which has not been filed by the petitioner. However, I do not find any merits in this contention. The letter of the Inspector General of Prison, Ahmedabad dated 26.4.1999 is there and this punishment has been given to the petitioner by the Superintendent of Jail under the directions of the said authority. When the order is passed under the directions of the authority, how far it is justified to take this remedy of the appeal as bar of entertaining of this special criminal application.

#. On merits I find that though there is a delay in surrendering of the petitioner, but if we go by his conduct, I find that on all the previous occasions as and when he was released on furlough leave or parole, he has surrendered in time. The petitioner has also furnished reasonable explanation for his this late surrendering. Rule though permit for late surrendering by the prisoner, a forfeiture of his furlough leave, but each case has to decide on its own facts and merits and where reasonable explanation has been furnished, it is not always rule to forfeit furlough leave.

#. I find sufficient merits in this special criminal application and the order of the authority to extent where it forfeit furlough leave of the petitioner deserves to be quashed and set aside. So far as forfeit of Rs.500/- deposited by the petitioner is concerned, it is a reasonable penalty in which no interference is called for.

#. In the result, this special criminal application is partly allowed and the order of the penalty which has been passed by the competent authority for late surrendering of the petitioner by 14 days is modified to the extent that forfeit of furlough leave may not be there. As and when the same falls due, the petitioner is free to avail of the same in accordance with law. Special Criminal Application and rule stand disposed of accordingly with no order as to costs.

(pathan)